

Kurt M. Zitzer (Bar No. 014110)
kzitzer@meagher.com
MEAGHER & GEER, P.L.L.P.
16767 N. Perimeter Dr., Ste. 210
Scottsdale, AZ 85260
Tele: (480) 607-9719
Fax: (480) 607-9780

Marshall M. Redmon (to be admitted *pro hac vice*)
marshall.redmon@phelps.com
Jeremy T. Grabill (to be admitted *pro hac vice*)
jeremy.grabill@phelps.com
PHELPS DUNBAR LLP
Canal Place | 365 Canal Street, Suite 2000
New Orleans, Louisiana 70130-6534
Tele: 504-566-1311
Fax: 504-568-9130

*Attorneys for Plaintiffs Certain Underwriters at Lloyd's, London
Subscribing to Policy Number GLOPR1901546 and
National Fire & Marine Insurance Company*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Certain Underwriters at Lloyd's, London
Subscribing to Policy Number
GLOPR1901546 and National Fire &
Marine Insurance Company,

Plaintiffs,

v.

Cobey, Inc.,

Defendant.

Case No.

COMPLAINT

(Jury Trial Demanded)

Plaintiffs Certain Underwriters at Lloyd's, London Subscribing to Policy Number
GLOPR1901546 and National Fire & Marine Insurance Co. (collectively, "Underwriters"),
for their Complaint against Defendant Cobey, Inc. ("Cobey"), allege the following.

Parties, Jurisdiction and Venue

1. Underwriters issued an Architects and Engineers Professional Liability insurance policy to Matrix Service Inc. (“Matrix”) bearing policy number GLOPR1901546 for the period July 1, 2019 – July 1, 2020 (the “Policy”). Certain Underwriters at Lloyd’s, London are subscribed to 83.34% of the Policy, and National Fire & Marine Insurance Company is subscribed to 16.66% of the Policy.

2. The Lloyd’s insurance market consists of syndicates that subscribe to a policy and each syndicate, in turn, is made up of individual members or investors (referred to as “Names”). “Although the Ninth Circuit has not addressed diversity [jurisdiction] requirements involving Names in the Lloyd’s insurance market, district courts within the circuit have repeatedly held that the citizenship of each Name must be considered for purposes of determining whether complete diversity exists.” *Nat’l Fire & Marine Ins. Co. v. Certain Underwriters at Lloyd’s London*, No. 08-1836, 2009 WL 10676368, at *2 (W.D. Wash. June 26, 2009) (internal citation omitted). Here, the syndicates that are subscribed to 83.34% of the Policy are Syndicate 3500,¹ Syndicate 1458, and Syndicate 2987.

a. Syndicate 3500. Syndicate 3500 is an unincorporated association, the managing agent of which is RiverStone Managing Agency Limited and the corporate member of which is RiverStone Corporate Capital Limited. Both RiverStone Managing Agency Limited and RiverStone Corporate Capital Limited are organized under the laws of the United Kingdom with their principal places of business in the United Kingdom. Accordingly, Syndicate 3500 is a foreign citizen for purposes of diversity jurisdiction.

b. Syndicate 1458. Syndicate 1458 is an unincorporated association, the managing agent of which is RenaissanceRe Syndicate Management Limited and the corporate member of which is RenaissanceRe

¹ Pursuant to a Reinsurance To Close, Syndicate 3500 is the successor-in-interest to Syndicate 1980. Therefore, although Syndicate 1980 appears on the Policy, that interest is now held by Syndicate 3500.

1 Corporate Capital (UK) Limited. RenaissanceRe Syndicate
2 Management Limited and RenaissanceRe Corporate Capital (UK)
3 Limited are both organized under the laws of the United Kingdom, with
4 their principal places of business in London, England. Accordingly,
5 Syndicate 1458 is a foreign citizen for purposes of diversity jurisdiction.

6 c. Syndicate 2987. Syndicate 2987 is an unincorporated association, the
7 managing agent of which is Brit Syndicates Limited and the corporate
8 member of which is Brit UW Limited. Brit Syndicates and Brit UW
9 Limited are both organized under the laws of England and Wales, with
10 their principal places of business in England and Wales. Accordingly,
11 Syndicate 2987 is a foreign citizen for purposes of diversity jurisdiction.

12 3. National Fire & Marine Insurance Company is subscribed to 16.66% of the
13 Policy. National Fire & Marine Insurance Company is a Nebraska corporation with its
14 principal place of business in Omaha, Nebraska. Accordingly, National Fire & Marine
15 Insurance Company is a citizen of Nebraska for purposes of diversity jurisdiction.

16 4. Matrix is an Oklahoma corporation with its principal place of business in
17 Oklahoma. Matrix is the prime contractor for a liquified natural gas storage facility in
18 Tucson, Arizona (the "Project") owned by Southwest Gas Corporation ("Southwest Gas").
19 Matrix issued Purchase Order No. 276717006005 to Cobey to design, manufacture, and
20 furnish four rotary screw compressors and related equipment (the "Equipment") for use in
21 the Project. A true and correct copy of the Purchase Order, with the contract Terms and
22 Conditions, is attached to this Complaint as "Exhibit A."

23 5. Cobey is a New York corporation with its principal place of business in New
24 York. Cobey designed, manufactured, and furnished the Equipment to Matrix for the
25 Project.

26 6. The Purchase Order Terms and Conditions state that the Purchase Order will
27 be governed by Arizona law and that any suit concerning any claims arising out of or relating
28 to the Purchase Order or any breach thereof will be instituted only in a federal or state court
seated in Tucson, Arizona. The United States District Court for the District of Arizona in

1 Tucson is the federal court located in Tucson, Arizona. Accordingly, pursuant to 28 U.S.C.
2 § 1391(b)(2), venue is proper in this Court.

3 7. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) because
4 complete diversity exists between the parties and the amount in controversy exceeds
5 \$75,000.

6 **General Allegations**

7 8. Cobey promised to design, manufacture, and furnish the Equipment to Matrix
8 in compliance with the requirements of the Purchase Order.

9 9. Cobey designed, manufactured, and furnished the Equipment to Matrix, but the
10 Equipment failed to properly function.

11 10. Pursuant to the Purchase Order Terms and Conditions, Matrix was entitled to,
12 and did, provide notice to Cobey of Cobey's non-conforming tender and provided Cobey a
13 reasonable opportunity to cure. Without limitation, from June 20, 2019 to November 13,
14 2019, Matrix and Cobey engaged in efforts to redesign and achieve proper performance of
15 the Equipment but Cobey failed to provide timely remedies and was ultimately unable to
16 succeed.

17 11. Based upon Cobey's failure to cure its non-conforming delivery, Matrix was
18 entitled under the Purchase Order to terminate all or any part of the Purchase Order without
19 prejudice to its other rights; bill Cobey and/or back-charge Cobey's account and/or set off
20 against any amounts which are or may become payable by Matrix to Cobey, under the
21 Purchase Order, for any and all liabilities, losses, damages, claims, fees, costs and expenses
22 incurred by Matrix arising out of or in connection with the non-conforming delivery or other
23 breach of the Purchase Order Terms and Conditions by Cobey, including any purchase by
24 Matrix of substitute goods or services from other suppliers, including all handling, packing,
25 crating, freight, security, expediting, and other charges, including the costs to remove and
26 reinstall of the goods, if any, by Matrix for associated delays.

27 12. On or about November 12, 2019, Matrix terminated the Purchase Order.

28 13. Since that time, due to the ongoing failure of the Equipment, Matrix has
undertaken its own efforts to redesign, repair, and at the request and direction of Southwest

1 Gas, ultimately replace the Equipment in order to achieve proper performance and final
2 acceptance of the Project by Southwest Gas, at significant expense.

3 14. Matrix filed a lawsuit against Cobey in the United States District Court for the
4 District of Arizona on July 23, 2020, Case 4:20-cv-00315-RCC (the “First Lawsuit”). Cobey
5 filed its answer and counterclaim in the First Lawsuit on September 8, 2020, and Matrix filed
6 its answer to Cobey’s counterclaim on September 28, 2020.

7 15. Matrix and Cobey agreed to dismiss the First Lawsuit without prejudice and to
8 toll their claims during the pendency of Matrix’s discussions with Southwest Gas and its
9 redesign, repair, and ultimate replacement of the Equipment (the “Tolling Agreement”). The
10 Tolling Agreement, executed by Cobey on March 18, 2021 and by Matrix on March 25,
11 2021, provided that the tolling of claims would end 90 days after the later of Matrix’s
12 completion of its ongoing work on the Equipment or resolution of the dispute between
13 Southwest Gas and Matrix related to the Project, unless terminated earlier by either Matrix or
14 Cobey which did not occur.

15 16. The First Lawsuit was dismissed without prejudice on April 2, 2021.

16 17. Southwest Gas granted final acceptance of the Project on February 28, 2022.

17 18. In accordance with the Tolling Agreement, Matrix filed a new lawsuit against
18 Cobey in this Court on May 17, 2022, to timely reassert its claims against Cobey that were
19 previously dismissed without prejudice and tolled. *See* Case 4:22-cv-00233-CKJ.

20 19. Pursuant to the Policy, Underwriters have reimbursed Martrix for certain losses
21 that Matrix alleges were caused by Cobey. Moreover, as between Underwriters and Matrix,
22 the adjustment of the insured loss is ongoing and future payments by Underwriters to Matrix
23 are possible. Therefore, Underwriters are legally and contractually subrogated to Matrix’s
24 claims against Cobey to the extent of Underwriters’ payments to Matrix under the Policy,
25 and Underwriters will similarly be subrogated to the extent of any future payments to Matrix
26 under the Policy. Underwriters bring this Complaint to assert their subrogation claims
27 against Cobey.

28 **Count One – Breach of Contract**

20. Underwriters incorporate their prior allegations as though set forth fully herein.

1 21. Matrix and Cobey entered into a valid and binding contract, the terms of which
2 are contained in the Purchase Order.

3 22. Cobey, without limitation, failed to properly design, manufacture, and furnish
4 the Equipment to the requirements of the Purchase Order, thereby breaching the Purchase
5 Order, and thereafter failed to adequately remedy its breach despite reasonable opportunity
6 granted by Matrix, resulting in significant damages to Matrix, in an amount to be proven at
7 trial.

8 23. Underwriters are legally and contractually subrogated to Matrix's claims
9 against Cobey to the extent of Underwriters' payments to Matrix under the Policy, and
10 Underwriters will similarly be subrogated to the extent of any future payments to Matrix
11 under the Policy. Underwriters are therefore entitled to damages from Cobey to the extent of
12 their subrogation rights, in an amount to be proven at trial.

13 **Count Two – Breach of Express Warranties**

14 24. Underwriters incorporate their prior allegations as though set forth fully herein.

15 25. Cobey expressly warranted the Equipment to be of good quality and
16 workmanship, free from all defects in workmanship and materials, merchantable, fit for the
17 purposes intended and strictly conforming to Project specifications and other requirements.
18 Such warranties expressly survives termination of the Purchase Order.

19 26. Cobey failed to design, manufacture and furnish Equipment that satisfied the
20 foregoing requirements, thereby breaching Cobey's express warranty to Matrix, and causing
21 Matrix significant damages in an amount to be proven at trial.

22 27. Underwriters are legally and contractually subrogated to Matrix's claims
23 against Cobey to the extent of Underwriters' payments to Matrix under the Policy, and
24 Underwriters will similarly be subrogated to the extent of any future payments to Matrix
25 under the Policy. Underwriters are therefore entitled to damages from Cobey to the extent of
26 their subrogation rights, in an amount to be proven at trial.

27 **Count Three – Breach of Implied Warranties**

28 28. Underwriters incorporate their prior allegations as though set forth fully herein.

29 29. Arizona law creates an implied warranty of merchantability and fitness for a
30 particular purpose in the sale of goods. A.R.S. §§ 47-2314 - 2315.

1 39. Underwriters are legally and contractually subrogated to Matrix's claims
2 against Cobey to the extent of Underwriters' payments to Matrix under the Policy, and
3 Underwriters will similarly be subrogated to the extent of any future payments to Matrix
4 under the Policy. Underwriters are therefore entitled to damages from Cobey to the extent of
5 their subrogation rights, in an amount to be proven at trial.

6
7 **Count Five – Professional Negligence**

8 40. Underwriters incorporate their prior allegations as though set forth fully herein.

9 41. Cobey owed Matrix a duty to perform its services under the Purchase Order
10 with professional skill, care, and diligence.

11 42. Cobey failed to perform its services with professional skill, care, and diligence,
12 thereby breaching its duty to Matrix, and causing Matrix to incur significant damages in an
13 amount to be proven at trial.

14 43. Underwriters are legally and contractually subrogated to Matrix's claims
15 against Cobey to the extent of Underwriters' payments to Matrix under the Policy, and
16 Underwriters will similarly be subrogated to the extent of any future payments to Matrix
17 under the Policy. Underwriters are therefore entitled to damages from Cobey to the extent of
18 their subrogation rights, in an amount to be proven at trial.

19 **Prayer for Relief**

20 Wherefore, Underwriters pray for the Court to enter judgment in their favor and
21 against Cobey as follows:

22 A. For Underwriters' compensatory damages in an amount to be proven at trial;

23 B. For Underwriters' costs and attorneys' fees as allowed by the Purchase Order
24 and law;

25 C. For pre-judgment interest on Underwriters' damages and post-judgment
26 interest on Underwriters' damages, costs, and attorneys' fees as allowed by law; and

27 D. For such other relief as the Court deems just and proper.
28

Demand for Jury Trial

Pursuant to Fed. R. Civ. P. 38, Underwriters hereby demand a jury trial.

DATED this 20th day of May 2022.

MEAGHER + GEER, P.L.L.P.

By: /s/ Kurt M. Zitzer

Kurt M. Zitzer
16767 North Perimeter Drive, Suite 210
Scottsdale, Arizona 85260

Marshall M. Redmon
(to be admitted *pro hac vice*)
Jeremy T. Grabill
(to be admitted *pro hac vice*)
Phelps Dunbar LLP
Canal Place | 365 Canal Street, Suite 2000
New Orleans, Louisiana 70130-6534

Attorney for Plaintiffs Certain Underwriters at
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